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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> FAHRARI A., a Minor,)	Appeal from the Circuit Court
)	of Winnebago County.
)	
)	No. 12-JA-115
)	
(The People of the State of Illinois,)	Honorable
Petitioner-Appellee, v. Salena A.,)	Mary Linn Green,
Respondent-Appellant.))	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Hudson and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court's findings that mother was unfit and termination of her parental rights was in the best interests of the child were not against the manifest weight of the evidence; and trial court did not err in denying motion to reconsider and reopen the proofs.

¶ 2 The respondent, Salena A., appeals from the termination of her parental rights with respect to her daughter, Fahrari A. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Fahrari was born on March 13, 2010. Her mother is Salena A., and her father is Keon W. Only the mother's appeal is before us.

¶ 5 On February 23, 2012, when Fahrari was about two years old, Salena A. gave birth to a boy whose blood tested positive for THC (the active component of marijuana) and cocaine. As a result, the Department of Children and Family Services (DCFS) opened a case for Fahrari and her baby brother the following day. Initially, the children remained with Salena, who was living with her own mother. However, both Salena and her mother failed two consecutive drug screens, testing positive for marijuana. As a result, the children were removed and placed in non-relative foster care in April 2012. They were adjudicated neglected or abused on June 29, 2012. The baby boy was eventually released to the custody of his father, and the case continued as to Fahrari only.

¶ 6 On August 8, 2012, Salena and her mother completed a drug screen; both tested positive for cocaine. On August 21, 2012, Salena contacted DCFS to say that she had just had another drug screen come back positive for cocaine. She complained that she did not know how that was occurring, as the only substance she had used was alcohol.

¶ 7 In August 2012, Salena began attending group counseling at Project Safe, but after attending one session she called in sick on two occasions and then skipped the following session. Although the service plan called for Salena to complete parenting classes, she could not begin them because the parenting program required participants to be clean and sober for 90 days prior to the start of the program.

¶ 8 Salena attended a meeting with her caseworker and two of her counselors in September 2012. The workers expressed concern about her inability to maintain her sobriety and her lack of progress in groups. They suggested that she attend groups until an inpatient treatment space opened up at Rosecrance (an inpatient substance abuse treatment program). Salena was eventually discharged unsuccessfully from the Project Safe program. The discharge summary noted that Salena had not been able to maintain her sobriety or attend groups on a regular basis,

and recommended that she abstain from ingesting any mood-altering substances, complete an assessment, and seek inpatient services. In January 2013, her worker told her that she could not receive any further services until she was able to maintain her sobriety.

¶ 9 Salena initially had supervised visits with Fahrari in her own home. During visits, Salena's behavior was appropriate and loving, and she did not appear to be under the influence of any substances. However, the frequency and length of Salena's visits with Fahrari were decreased after caseworkers determined, in December 2012, that the visits should no longer take place in her home. Workers told Salena that her visitation would be increased if she began participating in services. However, Salena still did not participate in services.

¶ 10 At a February 2013 court date, her caseworker testified that all of her drug tests for the last six months had been positive for illegal substances and that she had not engaged in any services since October 2012. Salena had not pursued getting an assessment and had not attempted to get into Rosecrance, and thus she had been dropped from the waiting list for the program. At the end of the hearing, the trial court found that she had not made reasonable efforts for the review period.

¶ 11 Salena eventually did obtain an assessment on May 9, 2013. She was put back on the waiting list for Rosecrance, but was removed again in June because she never contacted the program and did not respond when the program tried to contact her. At that point, she was advised that she would need to complete another assessment before she could be admitted into treatment. In addition, although she had been provided with the necessary contact information three times, by August she still had not participated in any substance abuse treatment, had not obtained a Narcotics Anonymous (NA) sponsor or attended NA meetings, and had not contacted her counselors at Project Safe. Salena missed several drug tests during this period, and those she did take were positive for drug use.

¶ 12 At a permanency hearing on August 19, 2013, the caseworker and Fahrari's guardian recommended that the goal be changed from "return home within 12 months" to "substitute care pending termination of parental rights" because of Salena's lack of progress. The trial court found that Salena had not made reasonable efforts or reasonable progress during the previous six months, and that it would be in Fahrari's best interest to change the goal.

¶ 13 In November 2013, the State filed a motion to terminate Salena's parental rights to Fahrari. Salena did not appear at the November 2013 court date. In December 2013, the caseworker reported that Salena said she had been clean for two months. However, Salena had not completed a drug screen. She still was not receiving any treatment for drug abuse. At the December hearing, the trial court set January 23, 2014, for the hearing on the State's motion to terminate parental rights. On December 31, 2013, Fahrari was moved and placed with her paternal grandmother, Wanda G.

¶ 14 Salena did not come to court on January 23, 2014. Her attorney told the trial court that she had tried unsuccessfully to contact Salena and asked to continue the hearing. The caseworker said that she also had been trying to contact Salena for almost a week, but the phone numbers she had were turned off and no one was home when she went by Salena's house. The trial court noted that Salena had been present in court in December 2013 when the January 23 date was set and therefore she had actual notice of the proceedings. Accordingly, the trial court denied Salena's attorney's motion for a continuance.

¶ 15 The caseworker testified that Salena's visitation had been decreased to one hour per month, supervised, at the agency. The caseworker testified that the primary obstacle to Fahrari returning continued to be Salena's drug use. Although Salena had completed an assessment in April 2013, she had never attended treatment or done any follow-up after that. She had failed to take eight drug screens in 2013 (which were then presumed to be positive), and had tested

positive for marijuana at the only drug screen she did take. The worker had set up a drug screen as recently as the week before the hearing to verify whether, as Salena claimed, she was clean, but again Salena did not complete it. No other services had been set up for Salena because it appeared that she continued to use marijuana. From the time the case began, Salena had never completed any of the programs required by the service plan, had been rated unsatisfactory for those services, and had never appealed her ratings. In addition, Salena had never asked about or attended Fahrari's medical appointments or school conferences, or engaged with Fahrari's doctors or teachers. In short, other than visiting with Fahrari for a few hours every month, Salena had failed to act as a parent toward Fahrari. Salena's attorney responded that Salena had engaged in some drug treatment early on, and had been regular in her visitation and her contact with the caseworker. The case was continued to March 5, 2014, for a ruling on fitness and for the best interests hearing.

¶ 16 Salena did not come to court on March 5, 2014, either. Her attorney asked to continue the matter, but the trial court denied the motion, noting that she had also failed to appear on the previous court date. The trial court found Salena unfit on all three grounds alleged by the State: failure to maintain a reasonable degree of interest, concern, or responsibility for Fahrari's welfare; failure to make reasonable efforts to correct the conditions that led to Fahrari's removal; and failure to make reasonable progress toward reunification during the first nine months after adjudication. The trial court then proceeded with the best interests hearing.

¶ 17 The caseworker testified that Fahrari was almost four years old and had recently been placed with her paternal grandmother after her previous non-relative foster parent could not provide permanency. Fahrari was doing well in her grandmother's care, and her grandmother wanted to adopt her. Her grandmother was also very responsive to the agency's requests and suggestions, was committed to making the placement work, and was willing to allow Salena to

continue to visit Fahrari. Although Salena visited regularly and Fahrari was bonded with her, Salena had seen Fahrari only once or twice per month since Fahrari had been in foster care, and Salena had not done “anything substantial” to fulfill Fahrari’s daily needs. Salena had been offered the opportunity to call Fahrari daily at her foster parent’s home, but declined because it was too painful for Salena. The trial court then found that it was in Fahrari’s best interest for Salena’s parental rights to be terminated. The order terminating parental rights was entered on March 19, 2014.

¶ 18 On April 8, 2014, Salena filed a motion to reconsider, explaining that she was not present at the best-interest hearing because she was ill, and asking to be allowed to testify. She did not provide details about the testimony she wished to give. At the hearing on the motion, the trial court asked Salena’s attorney how Salena’s testimony would have affected the outcome of the best-interest hearing. The attorney responded that she had planned to elicit Salena’s testimony about her relationship with Fahrari, “which would be relevant to the child’s background, family ties, things of that nature.” The trial court denied the motion, and Salena filed a timely notice of appeal.

¶ 19

II. ANALYSIS

¶ 20 In her appeal, Salena argues that the trial court’s findings of unfitness on all three grounds alleged by the State were against the manifest weight of the evidence, as was the finding that the termination of Salena’s parental rights was in Fahrari’s best interest. Salena also argues that the trial court abused its discretion in denying her motion to reconsider.

¶ 21 Termination of parental rights is a two-step process. *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 1. First, the trial court must find, by clear and convincing evidence, that the parent is unfit. *Id.* ¶ 63. Second, the court must determine, by a preponderance of the evidence, whether termination of parental rights is in the child’s best interests. *Id.*

¶ 22

A. Unfitness

¶ 23 Because the termination of parental rights constitutes a complete severance of the relationship between the parent and child, proof of parental unfitness must be clear and convincing. *In re Shauntae P.*, 2012 IL App (1st) 112280, ¶ 88. The trial court is in the best position to assess the credibility of witnesses, and a reviewing court may reverse a trial court's finding of unfitness only where it is against the manifest weight of the evidence. *Id.* ¶ 89. A decision regarding parental unfitness is against the manifest weight of the evidence where the opposite conclusion is clearly the proper result. *In re C.E.*, 406 Ill. App. 3d 97, 108 (2010). Each case concerning parental unfitness is *sui generis*, meaning that factual comparisons to other cases by reviewing courts are of little value. *Id.*

¶ 24 In this case, the trial court found Salena unfit on three grounds. Although section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)) sets forth several grounds under which a parent may be deemed unfit, any one ground, properly proven, is sufficient to sustain a finding of unfitness. *In re Shauntae P.*, 2012 IL App (1st) 112280, ¶ 89. Thus, we will sustain the trial court's finding of unfitness unless none of the three grounds is supported by the record.

¶ 25 Here, we find that all three grounds are supported by the record, but we choose to discuss only the second ground: the failure to make reasonable efforts, within nine months after an adjudication of neglect, to correct the conditions that formed the basis for the child's removal from the parent's care. 750 ILCS 50/1(D)(m)(i) (West 2012). Fahrari and her baby brother were removed from Salena's care in April 2012 because, after the baby had been born with illegal drugs in his system, drug tests showed that Salena was violating the safety plan by continuing to use such drugs. Thus, Salena's drug use was the condition upon which the removal was based. Salena's later drug tests during the relevant nine-month period (from June 29, 2012, through March 29, 2013) revealed that she tested positive for cocaine use four times, tested positive for

marijuana three times, failed to complete one test (which was therefore presumed positive), and was “clean” on only two occasions (the two tests in August 2012). Because of Salena’s lack of progress in maintaining sobriety and her concomitant failure to engage in the required services, her visits with Fahrari were moved from her home to the agency in December 2012, a clear step backward.

¶ 26 Salena raises two arguments with respect to this ground of unfitness. First, she argues that her own drug use was not really the reason for Fahrari’s removal from her care. We reject this argument as being contradicted by the record. Second, she argues that marijuana use is legal in some states and that it was not a proper basis for finding her unfit. We reject this argument as well, for several reasons. Marijuana use remains illegal in Illinois at present (barring a narrow exception for medical use not relevant here), and it was a condition of the service plan that Salena refrain from such use. Salena could not regain the right to care for her own children and be reunited with them unless she abstained from using marijuana. Under these circumstances, Salena’s continuing practice of using marijuana not only placed her at risk of arrest, it was a concrete demonstration that she continued to place her own desires ahead of the needs of her children. We further note that, even if Salena’s marijuana use were excluded from consideration, she tested positive for cocaine on four occasions. The illegality of cocaine and the deleterious nature of its effect on the ability to act as a caring parent are undisputed. Finally, during this time period Salena also failed to complete an assessment, participate in group counseling, or follow up to obtain inpatient drug treatment. For all of these reasons, the trial court’s finding of unfitness was not against the manifest weight of the evidence.

¶ 27 **B. Best Interests**

¶ 28 Under the Juvenile Court Act of 1987, the best interests of the child is the paramount consideration to which no other takes precedence. *In re I.H.*, 238 Ill. 2d 430, 445 (2010). In

other words, a child's best interest is not to be balanced against any other interest; it must remain inviolate and impregnable from all other factors. *In re Austin W.*, 214 Ill. 2d 31, 49 (2005). Even the superior right of a natural parent must yield unless it is in accord with the best interests of the child involved. *Id.* at 50.

¶ 29 The Juvenile Court Act sets forth the factors to be considered whenever a best-interests determination is required, all of which are to be considered in the context of a child's age and developmental needs: the physical safety and welfare of the child; the development of the child's identity; the child's family, cultural, and religious background and ties; the child's sense of attachments, including feelings of love, being valued, and security, and taking into account the least disruptive placement for the child; the child's own wishes and long-term goals; the child's community ties, including church, school, and friends; the child's need for permanence, which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives; the uniqueness of every family and child; the "risks attendant to entering and being in substitute care"; and the wishes of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2012).

¶ 30 Salena asserts that the above factors favor her position. She argues, on the first factor, that Fahrari was safe when in her care because her conduct during visits was rated as appropriate and she did not appear to be high during visits. We reject this argument, as Salena's visits were brief, and her other conduct refuted the possibility that Salena could or would refrain from using illegal drugs on a daily basis. Although it is undisputed that Salena attended all her visits with Fahrari and the two were well-bonded, it was also undisputed that Salena chose not to strengthen their ties through daily phone calls and chose not to pursue services that would have required her to give up her marijuana use. Salena argues that she was the "only consistent parent figure" in Fahrari's life, but she ignores that she was unable to take the steps necessary to establish a safe,

drug-free home to which Fahrari could return. Instead, the record shows increasingly fewer attempts to comply with the service plan. Finally, although Fahrari's current placement with her paternal grandmother had been in place only three months at the time of the fitness hearing, the grandmother had demonstrated substantial attentiveness to Fahrari's needs and a dedication to meeting them that Salena herself did not display. Moreover, the grandmother was open to allowing Salena continuing contact with Fahrari even after her parental rights were terminated. In light of the evidence, we find no error in the trial court's determination that it was in the best interests of Fahrari to terminate Salena's parental rights and make Fahrari available for adoption.

¶ 31 C. Motion to Reconsider and/or Reopen Proofs

¶ 32 Salena's remaining argument on appeal is that the trial court erred in denying her post-hearing motion to reconsider, which also requested that the proofs be reopened to allow her to testify. Her motion stated that she had been ill on the date of the best-interests hearing and included an exhibit showing that she had sought medical treatment for a bladder infection and headache the following day. In addition, her attorney explained that Salena had left a voicemail regarding her illness on the hearing date, but the attorney had not received the message until after the hearing. We assume, for the purposes of this discussion, that Salena was indeed unable to attend the best-interests hearing.

¶ 33 Nevertheless, the trial court did not err in denying her post-hearing motion. The denial of a motion to reconsider based on new evidence, like the denial of a motion to reopen the proofs, is within the trial court's discretion, and we will reverse only for an abuse of that discretion. See *In re Marriage of Lasota and Luterek*, 2014 IL App (1st) 132009, ¶28 (motion to reconsider based on new evidence); *In re Marriage of Sawicki*, 346 Ill. App. 3d 1107, 1120 (2004) (motion to reopen proofs). A trial court abuses its discretion only when its ruling is arbitrary or when no

reasonable person would take the view adopted by the trial court. *People v. Anderson*, 367 Ill. App. 3d 653, 664 (2006).

¶ 34 So long as a parent has been given proper notice of a hearing concerning the termination of her parental rights and the parent is represented by counsel who is present at the hearing, the termination hearing may proceed in the absence of the parent without violating the parent's due process rights. *In re C.L.T.*, 302 Ill. App. 3d 770, 779 (1999). Although "a parent has the right to be present at a hearing to terminate parental rights, it is not mandatory that she be present, and the trial judge is not obligated to wait" until she is present. *Id.* at 778.

¶ 35 Here, although Salena herself was not present at the best-interests hearing, her attorney was present, ably cross-examining witnesses and arguing on her behalf. Through these means, the attorney established that Salena and Fahrari were well-bonded, that Salena was consistent in her visits and appropriate during those visits, that Salena made several attempts to become sober although she was ultimately unsuccessful, and that Salena believed that keeping the case open to allow for Fahrari's return home would be preferable to placing Fahrari permanently with her paternal grandmother because that placement had begun only a few months earlier. Neither in her post-hearing motion nor at the hearing on that motion did Salena demonstrate what she could add to this evidence and argument if she were permitted to testify. Accordingly, although we generally recognize the importance of parental testimony, in this case the trial court did not act unreasonably in declining to reopen the proofs to allow Salena to testify.

¶ 36

III. CONCLUSION

¶ 37 For the foregoing reasons, the judgment of the circuit court of Winnebago County is affirmed.

¶ 38 Affirmed.